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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER DANIELS, MATTHEW J				
ART UNIT		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/725,991

Applicant(s)

EVANS ET AL.

Examiner

MATTHEW J. DANIELS

Art Unit

1791

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 and 17-62 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 17-62 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. **Claims 1, 22, and 39-41** are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Shills (USPN 4743471). **As to Claim 1**, Shills teaches a method for decorating a cementitious substrate (Abstract, line 2), the method comprising:

selecting a base color scheme for a substrate formed of a cementitious material (inherent in that a cementitious material is provided having some color);

selecting an accent color scheme (2:33-35);

providing the substrate having a base color scheme (2:62-65), a width and length (inherent), and a top surface (2:62-65), the top surface having portions which could be exposed or covered (Fig. 2);

applying before curing, to the exposed portion of the surface of the substrate, a substantially random distribution of globules in the lateral width along the longitudinal direction (Figs. 4, 5, 6) to form medallions, colored in the accent color scheme (3:1-20);

Curing together the substrate of the accent medallions to form a durable, bonded, color-accented substrate (5:7-16), leaving medallions bonded onto the top surface. The medallions would inherently extend above the top surface

Shills is silent to the deformation of the globules. However, it is submitted that because the coloring slurries of Shills are comprised of a wet slurry mixture (5:36-37) and applied by a rotating device from a distance (Fig. 5), that they would inherently deform. In the alternative, however, it would have been obvious to adjust the height of the application device, the amount of material applied, and the speed of the "flick roll" (6:1) such that some degree of deformation occurs.

As to Claim 22, Shills teaches a coloring slurry comprised of wet cement (water and cement) and aggregates (5:36-40). **As to Claims 39 and 40**, it is submitted that the medallions of Shills are applied within a time selected to provide fully integrated cohesion between the medallions and each substrate in view of the teaching that they remain on the Shills substrate. **As to Claim 41**, the medallions of Shills are cementitious (5:37) and would have a liquid content to provide some depth of elevation variation with the substrate.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 2 and 44-53** are rejected under 35 U.S.C. 103(a) as obvious over Shills (USPN 4743471) in view of Maurer (USPN 5648144). Shills teaches the subject matter of Claim 1 above under 35 USC 102(b), or in the alternative, under 35 USC 103(a). **As to Claims 2, 44-47, 52, 53**, Shills is silent to the texturing the material with linear or other textures using a mechanical device. However, Maurer teaches that a synthetic roofing member is capable of being brushed to provide or highlight its appearance (2:5-11) and provide the texture and “feel” of natural materials (3:10). In view of the teachings of Maurer, it would have been obvious to use either an automatic or manual brushing technique. It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate the method of Maurer into that of Shills in order to provide the same natural texture, appearance, and “feel” to the process of Shills. **As to Claims 48-51**, the claimed subject matter appears to be a limitation drawn to requirement of the occupation of the individual choosing the color scheme. The Examiner asserts that Shills performing the disclosed process is both a producer, designer, architect, and user, even if not officially certified as having the credentials of these professionals.
3. **Claims 5-14, 17-21, 23-29, and 31-43, 54-60** are rejected under 35 U.S.C. 103(a) as obvious over Shills (USPN 4743471) in view of De Paoli (USPN 2835996). Shills teaches the subject matter of Claim 1 above under 35 USC 102(b), or in the alternative, under 35 USC 103(a). **As to Claims 5-14, 17-21, and 54-60**, although Shills appears to be silent to the claimed materials, De Paoli clearly provides teaching and suggestion that “The colors of the base terrazzo and the colors of the terrazzo spatter inserts can be varied to produce unusual artistic effects.” (2:28-30) Additionally, De Paoli teaches “cement...which is of uniform or complementary color

with the terrazzo colors.” (3:15-18). Clearly De Paoli suggests a wide range of colors and effects, which would obviously be of different colors, inherently corresponding to or matching natural tones, hues, minerals, ages, biota, metal oxides, deposits, and plants, and reads on the claimed invention. It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate the method of De Paoli into that of Shills in order to vary the appearance of the resulting product.

As to Claims 23-29, 31-33, although Shills appears to be silent to the materials, De Paoli teaches a proportion of about 20% Portland cement to aggregate (2:48-58), that the particular consistency should be changed by adjusting the proportions of aggregate and cement (2:59-63), sand that could be used as masonry sand (2:51), and varying degrees of pigment (3:11-20 and 2:26-35) and water (2:48-59). De Paoli therefore teaches that color, cement/aggregate ratio, and water represent result effective variables which should be optimized in order to produce unusual artistic effects and provide the most optimum and driest possibly consistency. It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate these aspects of the De Paoli method into that of Shills in order to provide the same benefits.

As to Claims 34-40, although Shills appears to be silent to time of placement, De Paoli teaches or suggests that the medallions should be placed on selected areas of the semi-plastic slab to form a suitable design (2:1-2). Also see De Paoli’s teaching of “semi-plastic or partially cured state” (2:68-69). De Paoli clearly teaches that the ordinary artisan should choose or select a time at which the mixture is still plastic, which would have suggested to the ordinary artisan (a) any time over 1 second, and (b) that time at placement also represents a result effective variable

that should be optimized to maintain the semi-plastic layer. Doing so would obviously provide integrated cohesion, as claimed.

As to Claims 41-43, although Shills appears to be silent to the materials, the medallions of De Paoli are formed of a cement material which would have a liquid content and depth which would obviously or inherently simulate the appearance of biota. It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate the method of De Paoli into that of Shills in order to vary the appearance of the resulting product.

4. **Claims 3, 4, and 30** are rejected under 35 U.S.C. 103(a) as being unpatentable over are rejected under 35 U.S.C. 103(a) as obvious over Shills (USPN 4743471) in view of Arpin (USPN 2918385). Shills teaches the subject matter of Claims 1 and 22 above under 35 USC 102(b) or alternatively under 35 USC 103(a). **As to Claims 3, 4, and 30**, Shills is silent to low or zero slump concrete. However, Arpin teaches low to zero slump concrete (2:15-20), which would be the driest consistency possible because it would not provide excess water to cause slumping. It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate the method of Arpin into that of Shills in order to provide the driest consistency possible and to provide a quick setting material.

5. **Claim 53** is rejected under 35 U.S.C. 103(a) as being unpatentable over Shills (USPN 4743471) in view of Maurer (USPN 5648144), and further in view of Maletic (USPN 4940358). Shills and Maurer teach the subject matter of Claim 44 above under 35 USC 103(a). **As to Claim 53**, Shills appears to be silent to a texturing process which comprises automatically and

mechanically brushing the substrate by a mechanical device. However, Maletic teaches a texturing process which comprises automatically and mechanically brushing the substrate by a mechanical device (Figs. 1-8). It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate the method of Maletic into that of Shills in order to provide a textured surface which would avoid slipping and which efficiently performs the texturing task.

6. **Claims 12, 17-20 and 54-60** are rejected under 35 U.S.C. 103(a) as being unpatentable over Shills (USPN 4743471) in view of Gundlach (USPN 2057679) and Chaffee (USPN 1993086). Shills teaches the subject matter of Claim 1 above under 35 USC 102(b), or alternatively, under 35 USC 103(a). **As to Claims 12, 17-20 and 54-60**, Shills teaches coloring "with a desired color" (5:40), and therefore Shills suggests that one of ordinary skill in the art should select the desired color. Clearly Shills suggests a wide range of colors and effects, which would obviously be of different colors, inherently corresponding to or matching natural tones, hues, minerals, ages, biota, metal oxides, deposits, and plants, and reads on the claimed invention.

Although Shills is believed to suggest all color variations, Shills does not explicitly teach that the colors simulate biota. "Biota" may be interpreted to be any of the colors that simulate those of biota found in nature. Alternatively, "biota" may be interpreted to be a green color. In this alternative interpretation, Shills is silent to the biota colors. However, Gundlach teaches that green pigment may be mixed with aggregates and cement to form objects that are suitable as medallions (page 1, left column, line 54 - page 1, right column, line 39) and Chaffee teaches that

it is conventional to provide cementitious roofing tiles with a green coloring (page 2, left column, line 25 – page 2, right column, line 51). It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate the methods of Gundlach and Chaffee into that of Shills in order to provide cement having a highly weather resistant, aesthetically pleasing, and natural looking coloring to the articles of Shills. Also note that Chaffee additionally suggests at least one texture (page 2, left column, lines 56-68).

7. **Claim 61** is rejected under 35 U.S.C. 103(a) as being unpatentable over Chaffee (US 1,993,086) in view of Shills (USPN 4743471). **As to Claim 61**, Chaffee teaches molding a plurality of roofing tiles (page 2, left col., lines 25-38), each tile having a width, a length, an a top surface comprising an exposed portion (Fig. 16, item 12) and a covered portion (Fig. 16, item 19);

Selecting an accent color scheme (page 2, left col., line 69 to page 2, right col., line 8);

Applying onto substantially exclusively the exposed portion of each tile the accent color scheme contacting directly the cementitious material (Fig. 16);

Curing each tile would have been inherent, leaving the accent color bonded onto and extending above the top surface (Fig. 16);

Installing the plurality of tiles with exposed portions overlapping the covered portions of other roofing tiles (Fig. 16).

Chaffee is silent to:

(a) applying a substantially random distribution of globules of cement to form medallions as accents before curing.

(b) curing the tile and the medallions simultaneously.

However, Shills teaches a method including both (a) and (b) comprising:

Providing a plurality of roofing tiles (4:41-67) formed of an uncured cementitious material (5:7-16), each tile having a top surface (Figures) and portions which could be exposed and covered (Fig. 2);

selecting an accent color scheme (2:33-35);

applying before curing, to the exposed portion of the surface of the substrate, a substantially random distribution of globules to form medallions, colored in the accent color scheme (3:1-20), the distribution being applied to each tile in a substantially random arrangement (2:35-40), the distribution for each tile differing randomly from the other tiles (9:21-25);

curing together the substrate of the accent medallions to form a durable, bonded, color-accented substrate (5:7-16), and wherein the medallions would be left extending above the top surface;

Installing the plurality of roofing tiles, after curing, on a roof with some portions exposed and some portions overlapping (Fig. 2).

It is submitted that because the coloring slurries of Shills are comprised of a wet slurry mixture (5:36-37) and applied by a rotating device from a distance (Fig. 5), that they would inherently deform. In the alternative, however, it would have been obvious to adjust the height of the application device, the amount of material applied, and the speed of the "flick roll" (6:1) such that some degree of deformation occurs.

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate the method of Shills into that of Chaffee because (a) Chaffee clearly

suggests a colored tile and tiles having various different colors (page 2), which the process of Shills is known to provide in tiles having a similar composition and purpose, or (b) Chaffee appears to be silent to any particular device or process of applying in the coating, but one would have found it obvious to select from among the known and substitutable coating devices capable of applying the colors of Chaffee, such as the process of Shills.

8. **Claim 62** is rejected under 35 U.S.C. 103(a) as being unpatentable over Shills (USPN 4743471) in view of Jackson Pollock (Online NewsHour with Jim Lehrer Transcript: Jackson Pollock) and Chaffee (US 1,993,086). **As to Claim 62**, Shills teaches a method comprising:

Molding a plurality of roofing tiles of an uncured cementitious material (4:41-57, 5:7-16), each tile each tile having a top surface (Figures), a tile width extending in one direction and a tile length extending in another direction (Fig. 1), and portions which could be exposed and covered (Fig. 2);

Selecting an accent color scheme (2:33-35) wherein the ordinary artisan would have selected the appropriate color;

Throwing (Fig. 5) onto the exposed portion of the surface of the substrate before curing (5:7-16), a substantially random distribution of globules to form medallions, colored in the accent color scheme (3:1-20), contacting directly the uncured cementitious material (base color is also cement, 5:37, or 13:13-18, suggesting that a base color is optional before application of the colors);

Curing the tile and the corresponding medallions simultaneously (5:7-16), and wherein the medallions would be left extending above the top surface;

Installing the plurality of roofing tiles, after curing, on a roof with some portions exposed and some portions overlapping (Fig. 2), which would display the random distribution of medallions.

Shills is silent to (a) the deformation of the globules, and (b) throwing by hand, and (c) express teaching of the particular colors selected, and (d) applying the medallions exclusively to the exposed portions. However, these aspects of the invention would have been obvious for the following reasons:

(a) It is submitted that because the coloring slurries of Shills are comprised of a wet slurry mixture (5:36-37) and applied by a rotating device from a distance (Fig. 5), that they would inherently deform. In the alternative, however, it would have been obvious to adjust the height of the application device, the amount of material applied, and the speed of the "flick roll" (6:1) such that some degree of deformation occurs.

(b) Jackson Pollock teaches dripping or flinging paint by hand onto a surface to create an artistic effect (See page 4 of 7, where application occurs by hand).

(c) Chaffee teaches that suitable colors may include blue, green, or black (page 2), which are known to be the color of biota such as black mold and moss.

(d) Chaffee teaches that only the exposed portions have a coating or color applied thereto (Figs. 6, 15, 16).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate the methods of Jackson Pollock and Chaffee into that of Shills because (b1) Shills clearly suggests a flinging action (Fig. 5), and Jackson Pollock teaches that it is known to fling paints or colors by hand, thus Jackson Pollock provides that which Shills

suggests, or (b2) one would have recognized the step of manually flinging or applying color to the tiles of Shills as a substitutable alternative to the mechanized flinging of Shills, and (c1) Shills suggests colorants, but is silent to the particular colors, while Chaffee teaches desired colors for use in a similar roofing tile, or (c2) the colors of Chaffee would have been obviously substitutable for any disclosed by Shills in view of the fact that Chaffee teaches a range of colors suitable for roofing tiles, or (c3) one would have recognized from the Chaffee method that the coating of the covered portion would disrupt the fitting together of the roof tiles (See the overlapping relationship in Fig. 15), and one would have found it obvious to incorporate this improvement into the Shills method in order to improve the fit between the parts, applying a recognized improvement or feature from the art to a similar article where such an improvement would have been desirable.

Response to Arguments

9. Applicant's arguments filed 11 June 2008 have been fully considered but they are not persuasive or are moot in view of the new grounds of rejection above. The arguments are on the following grounds:

(a) The claimed distribution varies randomly in lateral width along the longitudinal direction.

The width of Shills' spray patterns must be substantially constant.

(b) With respect to Claims 61 and 62, Applicant also does not find any mechanism for monitoring what portion of the tile is below the applicator, and Shills does not provide medallions only to the exposed portions. The Office Action is silent to this issue.

(c) With respect to Claim 62, there is no disclosure of the hand throwing of globules or medallions that directly contact the uncured cementitious material since there is a base material.

(d) Maurer does not remedy the teachings of Shills. Additionally, Maurer teaches brushing to highlight the patterns on already formed members. This is polishing, not texturing.

(e) De Paoli is incompatible with Shills because De Paoli provides a poured slab which is ground smooth. Shills would have to be structurally re-engineered to a different purpose to insert spatters as taught by De Paoli. The exposed surfaces of De Paoli would not simulate the appearance of biota.

(f) Arpin teaches the “driest consistency possible” while Shills teaches a slurry. Thus, the references are incompatible.

(g) Maletic teaches a very regular texturing pattern with a regular orientation, And the Office Action does not provide the required clear articulation of why the claimed invention would have been obvious.

(h) Applicant finds nothing teaching or suggesting the color green in the Chaffee reference.

10. These arguments are not persuasive for the following reasons:

(a) The colors of Shills are never exactly duplicated on another roof tile (13:26-27), and therefore Shills is interpreted to provide the same designs or distribution of material as the claimed invention. Additionally, it must be noted that the colorant application system of Shills is a brush which flings material. The Examiner interprets this to be a random pattern which reads on the claimed invention. In view of the brush of Shills, which does not touch the substrate, it is unclear how a nonrandom colorant application is asserted to be present.

(b) Note that this new limitation is addressed by the Chaffee reference above, which clearly suggests that colorant would only be applied to the visible portion, and not the overlapping portion.

(c) Firstly, the base material of Shills is also a cement material, and thus the colorants still directly contact uncured cementitious material. Second, Claim 1 of Shills suggests that the use of a base color is merely a preferred embodiment not necessary in all cases. The broadest reasonable interpretation includes the use of merely a pattern of colors. Third, one of ordinary skill would have found it obvious to omit the base color where the plural colorants cover substantially the entire surface of the tile.

(d) Maurer does not appear to use the word "polishing" anywhere in the patent. The claim requires "texturing" which Maurer clearly provides (3:1-7).

(e) De Paoli teaches conventional aspects about concrete fabrication and coloring of cement. The reference demonstrates that the ordinary artisan has knowledge of many or most of the claimed techniques, such as variation of cement colors and ratio of the various materials in the cement. These aspects are still deemed to be combinable with the Shills reference, which teaches a concrete or cementitious substrate.

(f) The claims refer to the substrate material, not to the colorants or medallions, and it is submitted that the Arpin reference is valid for its teaching of a substrate material. The "slurry" of Shills applies to the colorants and coatings, and does not appear to apply to the substrate material.

(g) Please reconsider the scope of Claim 44 and the rejection of Claim 44 where Maurer teaches a random texturing. The argument argues against the Maletic reference separately without

considering the combined teachings of Shills, Maurer, and Maletic. Additionally, it must be noted that this argument and claim are drawn to an artistic effect, which would generally be obvious to the ordinary artisan practicing the method of Shills alone, or taken in combination with Maurer.

(h) As an aid to Applicant, the following is a reproduction of a portion of the left column of page 2 of the Chaffee patent.

70	Each shingle simulating section 2 may be given a different color in order to strengthen the illusion of individually laid shingles. The color may be obtained by mixing desired pigments with the cement coating. Iron oxide produces a satisfactory red, ultramarine blue may be used in producing various shades of blue or green, and lamp
75	

Excerpt from Page 2, left column of Chaffee (US 1,993,086)

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MATTHEW J. DANIELS whose telephone number is (571)272-2450. The examiner can normally be reached on Monday - Friday, 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson can be reached on (571) 272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Matthew J. Daniels/
Primary Examiner, Art Unit 1791
10/8/08